

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DONALD R. CALHOUN dba
CALHOUN'S ARCO,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-146

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 6.04 of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington (presiding), and Gayle Rothrock, at a formal hearing in Lacey, Washington on February 25, 1982.

Appellant was represented by Mr. and Mrs. Donald Calhoun; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes

1 these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
5 certified copy of its Regulation I and amendments thereto, which are
6 noticed.

7 II

8 Appellant on or about March 24, 1981, filed a notice of
9 construction of an air contaminant source under article 6 of
10 Regulation I, but did not pay the required fees; and although
11 requested by the respondent to do so appellant has continued to refuse
12 to pay the required fee.

13 III

14 Any Conclusion of Law which should be deemed a Finding of Fact is
15 hereby adopted as such.

16 From these Findings the Board enters these

17 CONCLUSIONS OF LAW

18 I

19 The pertinent part of Section 6.04 of Regulation I provides as
20 follows:

21 The Agency shall not commence processing of a
22 Notice of Construction and Application for Approval
23 until it has received a filing fee of \$35.00, plan
24 examination and inspection fees as shown in Table A,
25 and, if offsetting emission reductions are required,
26 an offset analysis fee of \$100.00.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 81-146

Under Section 6.04 the only penalty for not paying the required fee is that the agency will not process the notice of construction until the fees are paid. The failure to pay such fees does not violate the regulation because the regulation does not require such payment. Consequently, the penalty provided for in Section 3.25 for violating Regulation I does not come into play.

If a person constructs, installs or establishes a new air contaminant source without filing the notice required in Section 6.03 and paying the required fees, such person would be in violation of Section 6.03 and be subject to the penalty provided in Section 3.25. However, appellant was not charged with a violation of Section 6.03.

II

Since mere failure to pay the fees provided in Section 6.04 is not subject to the penalty provided in Section 3.25, Notice of Civil Penalty No. 5237 should be reversed.

III

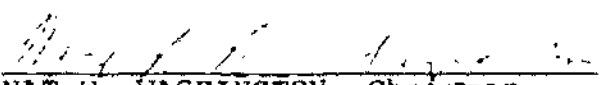
Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

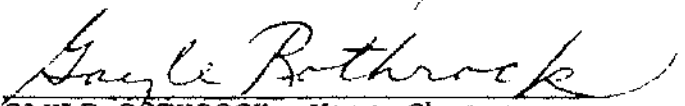
From these Conclusions the Board enters this

ORDER

The \$250 civil penalty assessed by Puget Sound Air Pollution Control Agency to Donald R. Calhoun dba Calhoun's Arco is reversed.
DONE at Lacey, Washington this 31st day of March, 1982.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


GAYLE ROTHROCK, Vice Chairman

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 81-146